IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS APPLICATION NO.1677 OF 2005

IN

CRIMINAL BAIL APPLICATION NO.5125 OF 2004

IN

C.R.NO.137/(747/PW/2004) of MALWANI POLICE STATION.

Mr.Rajubhai @Jacob Mathew Pinto ... Applicant

vs.

The State of Maharashtra ... Respondent.

Mr.Akhilesh K.Dubey, for the Applicant.

Mr.K.V.Saste, APP for the State-Respondent.

CRIMINAL APPLICATION NO.2134 OF 2005
(For cancellation of bail)

The State of Maharashtra ... Applicant

vs.

Mr.Rajubhai @Jacob Mathew Pinto & Anr. ... Respondents.

Mr.K.V.saste, APP for the Applicant-State.

Mr.Akhilesh K.Dubey, for the Respondents..

CORAM: A.M.Khanwilkar,J.

DATED: 4th April, 2005.

P.C.:-

1. Criminal Application no.1677 of 2005 has been filed by the accused. The said accused was directed to be released on bail by this Court vide order dated 23.11.2004 in Criminal Bail Application no.5125 of 2004 on default within the meaning under Section 167(2) of Criminal Procedure Code, as the chargesheet was not filed by the prosecution within the stipulated period. That course was adopted in view of the exposition in the case of " Uday Mohanlal Acharya Vs. State of Maharashtra, 2001 Supreme Court Cases (Cri) 760". After the said order was passed, the accused made an attempt to furnish the bail and sureties as directed by this Court. The applicant eventually furnished the Cash Bail on 3rd March,2005 on which basis he came to be released. However, the applicant could not furnish the sureties within one week as was required by order dated 23.11.2004. In that background, the applicant has preferred the present application on 9th March,2005 with a prayer to extend the time by Four weeks.

2. While the abovesaid application was pending, the State has filed companion criminal Application no.2134 of 2005 for cancellation of bail. Reliance is placed on the decision in the case of "Sunitadevi Vs. State of Bihar & Another, (2005) I Supreme Court Cases 608. Besides, during the course of arguments, A.P.P. has placed

reliance on the decision of the Patna High Court in the case of “Dhena Suren Vs. The State, 1977 Cri.L.J. 781”, to contend that it is open to the Court to cancel the bail if the prosecution is able to satisfy that there is an evidence discovered subsequently for which reasons the accused should not be allowed to remain on bail.

3. After hearing the counsel for both the parties, in my opinion, as the application preferred by the State for cancellation of bail is on the ground that the evidence has been discovered indicating the complicity of the applicant in relation to the offence in question, which are placed on record alongwith the chargesheet before the appropriate Court, this matter can be considered by the appropriate court where the chargesheet has been filed. In this view of the matter, the application preferred by the State is disposed of with the observation that all questions in that respect are kept open to be considered by the appropriate Court where the prosecution has filed the Chargesheet against the applicant.

4. In so far as the application preferred by the accused for extension of time is concerned, for reasons mentioned in the application, same is granted on condition that the accused shall submit the sureties in terms of order dated 23.11.2004 within one week from today. It will be ope to the accused to furnish sureties from Thane or Bombay as the case may be, before the appropriate Court provided it is to be done within one week from today. The application preferred

by the accused is disposed of.

Both the applications are disposed of.

--- (A.M.Khanwilkar,J.)